

REMARKS

Applicant thanks the Examiner for reconsidering and withdrawing the previous grounds of rejection. In the Final Office Action, the Examiner rejected claims 13-22 under 35 U.S.C. 103(a) as being unpatentable over WIPO Publication 2000/072768 to Fortin et al. (hereinafter "Fortin") in view of U.S. Patent No. 6,241,730 to Alby (hereinafter "Alby"). Applicant respectfully traverses this rejection.

By this response, Applicant proposes amending claims 13 and 16. No new matter has been added. Claims 13-22 remain currently pending.

As noted, in the Office Action, the Examiner rejected claims 13-22 under 35 U.S.C. 103(a) as being unpatentable over Fortin in view of Alby. Applicant respectfully traverses this rejection.

Claim 13, as amended, now recites, among other things, a first rod member and a second rod member and wherein at least one of the first rod member and the second rod member is curved along its entire length. None of the cited references teach or suggest this combination of features.

Regarding Fortin, it merely teaches rods that are rectilinear, but having curved ends. (See Fortin at Fig. 14.) For the convenience of the Examiner, Fig. 14 from Fortin is reproduced below.

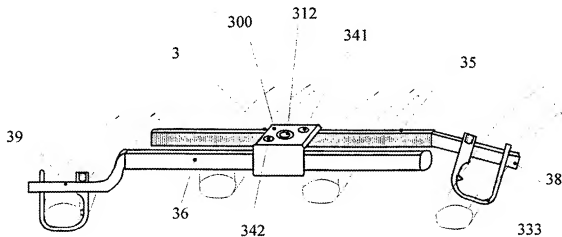


fig.14

In contrast, claim 13 now recites that at least one of the first or second rod members is curved along their entire length. For example, Figs. 2B and 5 from the present disclosure are reproduced below to illustrate rod members that are curved along their entire length, as claimed.

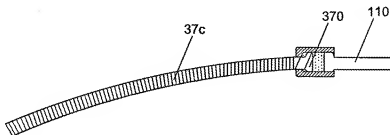


Figure 2B

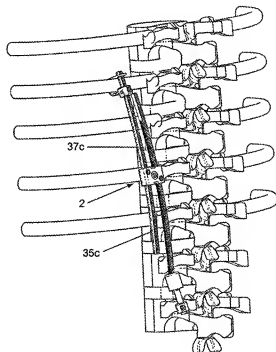


Figure 5

Rod members that are curved along their entire length may be advantageous over rods that merely have curved ends because curved rods may more carefully follow the curvature of a

patient's spine. (e.g., see Specification at [0028].) Accordingly, Fortin's rod members, which are curved only at their ends is not the same as a first rod member and a second rod member and wherein at least one of the first rod member and the second rod member is curved along its entire length, as claimed. Therefore, Fortin does not teach or suggest at least this feature.

Furthermore, Alby fails to cure the deficiencies of Fortin. Alby appears to merely teach an intervertebral link device. (See Alby at Abstract.) Alby, however, only discloses rectilinear links and not links that are curved. Therefore, Alby also fails to teach or suggest a first rod member and a second rod member and wherein at least one of the first rod member and the second rod member is curved along its entire length and suffers from the same deficiency as Fortin.

Accordingly, even if Fortin and Alby were properly combinable (which they are not), the combination would still fail to teach or suggest all the features of claim 13. Therefore, Applicant respectfully requests reconsideration and allowance of claim 13.

As to claims 14-22, these claims depend from claim 13, and thus, are allowable for at least the same reasons that claim 13 is allowable, as well as for their additional features. Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Applicant has endeavored to address all of the Examiner's concerns as expressed in the outstanding Office Action. Accordingly, arguments in support of the patentability of the pending claim set are presented above. In light of the above remarks, reconsideration and withdrawal of the outstanding rejections are respectfully requested. If the Examiner has any questions that may be answered by telephone, he is invited to call the undersigned directly. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 50-5067.

Respectfully submitted,

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